



# **COMMONWEALTH OF MASSACHUSETTS**

## **Department of Telecommunications and Cable**

1000 Washington Street, Suite 820, Boston, MA 02118

(617) 305-3580

[www.mass.gov/dtc](http://www.mass.gov/dtc)

**CHARLES D. BAKER**  
GOVERNOR

**KARYN E. POLITO**  
LIEUTENANT GOVERNOR

**JAY ASH**  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

**JOHN C. CHAPMAN**  
UNDERSECRETARY

**KAREN CHARLES PETERSON**  
COMMISSIONER

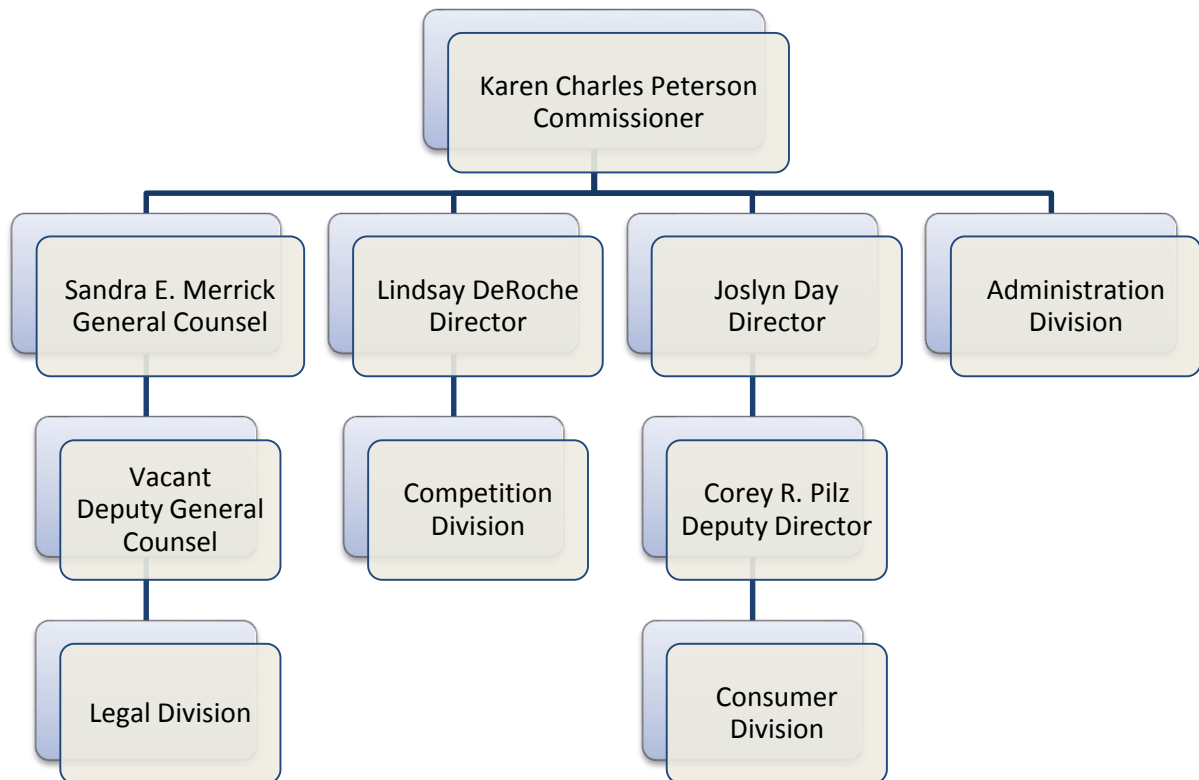
## **Massachusetts Department of Telecommunications and Cable Fiscal Year 2016 Annual Report Issued: October 18, 2016**

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# Organizational Chart

## Fiscal Year 2016 Department of Telecommunications and Cable



## **Department Regulatory Responsibilities**

The Department of Telecommunications and Cable (“Department”) is funded through an annual assessment by telecommunications and cable companies as authorized by the annual General Appropriations Act, line item 7006-0071 and pursuant to Chapter 25C, Section 7 of the Massachusetts General Laws (“M.G.L.”) and Chapter 19 of the Acts of 2007. The Department’s operating budget for Fiscal Year<sup>1</sup> (“FY”) 2016 was \$3 million. Any unexpended balances are credited to the General Fund.

The telecommunications industry over which the Department has jurisdiction is made up of common carriers, including local exchange carriers, interexchange carriers, operator service providers, payphone companies, and cable companies. As of FY 2016, more than 358 telecommunications carriers were registered with the Department and reported nearly \$1.26 billion in intrastate telecommunications revenues for calendar year 2014.<sup>2</sup>

The cable industry in Massachusetts is comprised of 10 cable television providers serving over 2.19 million cable video subscribers in 308 of the Commonwealth’s 351 cities and towns. Cable providers include Braintree Electric Light Department, Charter Communications, Comcast, Cox Communications, Norwood Light Department, RCN, Russell Cable Television, Shrewsbury Electric and Cable Operations, Time Warner Cable,<sup>3</sup> and Verizon. Cable providers reported more than \$2.6 billion in intrastate cable revenues in calendar year 2014.<sup>4</sup>

The Department’s mission is to: (1) oversee the telecommunications and cable industries in accordance with the statutory obligations imposed by the Commonwealth of Massachusetts and the federal government; (2) ensure that consumers receive high quality communications at just and reasonable rates; (3) promote sustainable competition which will increase the welfare of all Massachusetts residents and businesses; (4) maintain and enforce consumer protections, consistent with the public interest, particularly where market forces alone are not sufficient to do so, including investigating and responding to inquiries and complaints from consumers, providers, carriers and other interested parties; and (5) provide expert input into the development of telecommunications- and cable-related policies for the Commonwealth and the federal government.

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<sup>1</sup> The Commonwealth’s Fiscal Year (FY) runs from July 1 to June 30.

<sup>2</sup> Per statute, telecommunications carriers report calendar year revenues by March 31 of the following year. Statutory assessments against regulated carriers’ reported revenues for a particular calendar year are made in a subsequent FY. For instance, FY 2016 assessments are based on calendar year 2014 reported revenues.

<sup>3</sup> On May 18, 2016, Time Warner Cable completed a merger with Charter Communications.

<sup>4</sup> Like assessments against telecommunications carriers, statutory assessments against cable providers’ reported revenues for a particular calendar year are made in a subsequent FY. Again, FY 2016 assessments are based on calendar year 2014 reported revenues.

The Department's general responsibilities are:

### **1) Protect and Educate Consumers**

- Establish and enforce basic consumer protections (e.g., the Department's billing and termination requirements, including, for example, disconnect rules for senior citizens), and educate consumers on these protections;
- Mediate consumer complaints, including billing issues, questions about wireless service, internet service and VoIP service,<sup>5</sup> service quality, and other complaints between residential, business, and municipal customers and their service providers;
- Coordinate with the State 911 Department to ensure access to quality emergency telecommunications services for all Massachusetts consumers;
- Monitor and implement the federal Universal Service Fund ("USF") programs, including the Lifeline low-income discount, high-cost Connect America Fund, E-rate and rural health care programs; and
- Review and, where appropriate, approve applications for "eligible telecommunications carrier" ("ETC") status. ETCs must meet certain service obligations to be eligible to receive federal universal service funds ("USF").

### **2) Promote Competition**

- Revise existing policies and develop new policies in response to new technologies and market conditions;
- Collect and compile data on the status of competition in the telecommunications and cable industries in Massachusetts;
- Develop and implement policies that promote competition in areas of the state where it lags;
- Develop and enforce policies to promote wholesale and retail competition; and
- Implement competition-related rule changes consistent with state and federal law.

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<sup>5</sup> The Department does not regulate wireless, VoIP or internet service. M.G.L. c. 25C, § 6A; M.G.L. c. 25C, § 8. However, the Department strives to assist all consumers with telecommunications related requests.

### **3) Inform and Advocate**

- Analyze major federal legislative and regulatory decisions to evaluate their impact on state regulation of the telecommunications and cable industries and, when appropriate, advocate on behalf of Massachusetts consumers before the Federal Communications Commission (“FCC”) and Congress;
- Explain Department regulations and policies, and provide other information as requested by consumers, providers, carriers, public officials, the Legislature, the Administration, and others;
- Monitor and evaluate proposed state legislation and provide recommendations;
- Propose state legislation where appropriate to adapt to changing technologies and market conditions;
- Analyze new technologies and market developments in order to determine their impact on consumers and the competitive marketplace;
- Participate in regional and national regulatory groups to ensure that Massachusetts interests are represented;<sup>6</sup> and
- Comply with periodic FCC reporting requirements.

## **Telecommunications Industry Regulation**

### **Regulatory Framework**

The Department regulates telecommunications providers principally through its enabling legislation, M.G.L. chapters 25C, 159, and 166. The federal Telecommunications Act of 1996 (“Telecom Act”) led to major changes in the telecommunications industry and how it is regulated. The increase in competition, spurred in large part by technological innovation, required that the Department adjust its regulations to reflect changes in market conditions and relax its regulations where market forces are sufficient to protect consumer interests, thereby ensuring that the Department continues to promote competition. However, where market forces are not sufficient to safeguard consumer interests, the Department has continued to enforce necessary protections.

The Department has jurisdiction over telecommunications services that originate and terminate within or between Massachusetts’ two federally-designated “Local Access and

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<sup>6</sup> National memberships and involvement include: the North America Numbering Council, the Federal Communication Commission’s Consumer Advisory Committee, the Federal-State Joint Board on Universal Service, the National Association of Regulatory Utility Commissioners, NATOA, MMA, Federal Communications Bar Association and the New England Conference of Public Utility Commissioners.

Transport Areas” (“LATAs”).<sup>7</sup> The FCC generally regulates interstate and international telecommunications services.

### **Department Responsibilities**

The Department’s primary telecommunications-related responsibilities include:

- Enforcing service quality standards;
- Retail market oversight;
- Ensuring public safety and network reliability;
- Wholesale market oversight; and
- Market entry and exit.

#### **1) Enforcing Service Quality Standards**

Verizon New England, Inc. d/b/a Verizon MA (“Verizon”) is the Commonwealth’s incumbent local exchange carrier (“ILEC”) in all but a handful of towns in Massachusetts. Verizon also serves as the Commonwealth’s carrier-of-last-resort in its service area. As such, Verizon is subject to certain service quality standards and other requirements, which the Department monitors and enforces. Additionally, the Department ensures that Verizon allocates sufficient resources for the maintenance of service and call quality to all its customers, regardless of their location.

The Department adopted, and continues to monitor, a Retail Service Quality Plan (“Plan”) for Verizon retail customers. This Plan consists of twelve service measures in the categories of Installation Service, Maintenance Service, and Service Response. Verizon reports its performance on each of the measures to the Department on a monthly basis. If Verizon’s performance, on a rolling basis, falls below the Department’s threshold, Verizon pays a penalty in the form of a refund to all residential and business customers. The Department also evaluates Verizon’s retail service quality at the local level when the Department receives a formal complaint from city or town officials or customers.

Separately, the Department monitors Verizon’s compliance with a Performance Assurance Plan (“PAP”) for Verizon wholesale customers. The Department and Verizon instituted the PAP in order to ensure that Verizon provides high-quality service to competitive local exchange carriers (“CLECs”) pursuant to §271 of the Telecom Act. The PAP includes: (1) the adoption of carrier-to-carrier service measurements and standards; (2) scoring mechanisms to determine whether CLECs are receiving non-discriminatory treatment; (3) a provision for the payment of bill credits to CLECs if Verizon’s reported performance does not meet certain standards; (4) monthly reporting

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<sup>7</sup> The Western Massachusetts LATA consists of the 413 area code; all other area codes in the Commonwealth fall under the Eastern Massachusetts LATA.

requirements; and (5) provisions for annual review, updates, and audits. Like the Retail Service Quality Plan, Verizon submits PAP reports on a monthly basis.

## **2) Retail Market Oversight**

The Department develops and enforces policies to promote retail competition, including policies that relax regulation where market forces are sufficient to protect consumer interests. However, the Department continues to regulate certain Verizon basic retail services over which the company still retains market power. The Department similarly regulates the rates, services, and practices of three, small, rural ILECs in Western Massachusetts that have market power in their service territories. The Department also sets rates and monitors service quality for inmate calling services and ensures that reasonable service quality and certain consumer protections are provided by all traditional voice (i.e., non-Voice over Internet Protocol (VoIP)) carriers.

## **3) Ensuring Public Safety and Network Reliability**

The Department helps to ensure adequate funding of the E-911 network (i.e., oversee the cost of the network and establish the retail surcharge to fund the network) and to provide oversight of the State 911 Department's expenditures, pursuant to Chapter 223 of the Acts of 2008. Additionally, the Department:

- Facilitates quick resolution of wholesale and retail service outages by working closely with carriers and the Massachusetts Emergency Management Agency;
- Enforces Verizon's major extended service outage rules, which are intended to address prolonged outages affecting 200 or more customers;
- Periodically reviews the adequacy of carrier network reliability plans;
- Enforces Verizon's central office collocation security rules; and
- Participates with other state utility commissions to guide federal policy impacting public safety requirements at the state and local levels.

## **4) Wholesale Market Oversight**

Apart from building their own facilities to serve customers, carriers that wish to compete in the retail telecommunications market have two modes of entry available to them. One of these is to lease unbundled network elements from the ILEC<sup>8</sup> or another carrier and provide service over this leased network. Verizon is the ILEC for all but four towns (Gosnold, Granby, Hancock, and Richmond) in Massachusetts. Pursuant to federal law, the Department has authority over Verizon's wholesale provision of unbundled network elements to ensure that they are provided in a non-discriminatory manner, and

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<sup>8</sup> The ILEC is the entity that owned the network prior to the introduction of competition.



regulates the rates at which they are leased. The other way a carrier can enter the market is to purchase a service from another carrier (usually Verizon) at a predetermined wholesale discount rate, then brand the service with its own name and resell it. The Department develops the wholesale discount rate for Verizon pursuant to FCC methodology.

The Department plays a key role in setting the wholesale and resale rates at which carriers can lease parts of each other's networks—this applies in particular to ILECs' networks. Consistent with the Department's oversight of the wholesale telecommunications market, the Department:

- Establishes the terms and conditions under which facilities-based carriers interconnect their networks, exchange traffic, and generally conduct their business relationships;
- Resolves disputes between competing carriers over wholesale rates and service issues;
- Establishes and enforces wholesale service quality standards for Verizon through its PAP so that Verizon does not discriminate against competing carriers in providing wholesale services;
- Sets rates at which competitors can resell Verizon's retail services;
- Ensures that competing carriers do not create barriers to consumer choice (e.g., enforce number porting requirements);
- Enforces phone number allocation rules (i.e., monitor use of telephone numbers by carriers and promote number conservation to ensure an adequate supply of telephone numbers for the industry and to prevent the need for new area codes); and
- Coordinates with the Department of Public Utilities ("DPU") to ensure access to rights-of-ways for all carriers by establishing and enforcing rules concerning the rates and access to utility poles and conduits.

## **5) Market Entry and Exit**

In the mid-1990s, the Department streamlined the registration process for companies wishing to do business as carriers within the Commonwealth in order to reduce barriers to market entry and encourage competition for telecommunications service in Massachusetts. Previously, the Department conducted an investigation into the financial, managerial, and technical abilities of a carrier to offer service. Presently, most carriers may now offer service based simply on the submission of a Statement of

Business Operations (“SBO”) and a Department-approved rate schedule.<sup>9</sup> The streamlined entry process permits the Department and carriers to devote greater resources and staff time to other responsibilities. Reviewing the new registrations from companies seeking to provide telecommunications services in Massachusetts and ensuring compliance with Department registration rules ensures quality service offerings. In monitoring market entry and exit, the Department:

- Reviews registrations and individual rate schedule filings and online rate schedules that establish new service offerings or change the rates, terms, or conditions of existing service offerings;
- Enforces entry requirements to ensure that no carriers are operating illegally in Massachusetts;
- Facilitates a smooth, orderly process when carriers discontinue services or exit the market entirely to prevent disruption of service to customers; and
- Requires carriers to notify the Department of any transfers of ownership or control in order to ensure that Department records are up to date.

## **Cable Industry Regulation**

### **Regulatory Framework**

Cable television is regulated at the local, state, and federal levels. The Department regulates cable providers principally pursuant to its enabling legislation, M.G.L. c. 166A, and implementing regulations at 207 C.M.R. § 1.00 et seq. In recent years, new entrants have emerged in the marketplace, such as competitive overbuilders and municipally-owned companies. Principal among these competitive providers are telephone companies that have begun offering video service, as well as high-speed internet service, in competition with incumbent cable operators. As of the close of FY 2016, 118 communities are being served by an incumbent cable provider and at least one competitive cable provider.

### **Department Responsibilities**

The Department’s primary cable-related responsibilities include:

- Oversight of cable television franchising, franchise renewal, and the transfer of cable franchises within the Commonwealth;

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<sup>9</sup> Payphone providers are not required to file rate schedules but are required to register and file annual returns with the Department. In addition, the Department requires that all payphones have labels clearly identifying the owner/operator of the phone, and must provide free access to 911 and directory assistance.

- Establishing basic service tier programming, equipment, and installation rates for communities in Massachusetts that have requested rate regulation;
- Enforcing consumer protection standards; and
- Collecting, compiling, and maintaining statistical data from cable providers on, among other things, consumer complaints, rates, terms and conditions, market share, and financial performance.

### **1) Oversight of Municipal Cable Franchising**

In Massachusetts, local municipalities act as the Issuing Authorities and negotiate and grant cable licenses, while the Department retains oversight authority in licensing matters. The Department conducts an extensive educational program for communities involved in the licensing process, regarding the applicable substantive and procedural requirements at the local, state, and federal levels. When licensing disputes or license transfers arise at the local level, the Department can facilitate discussions between cable operators and municipalities, and provide appellate review of final local level decisions.

### **2) Rate Regulation**

The Department regulates subscribers' rates for basic service tier programming, equipment, and installation in those Massachusetts communities that: (1) have requested rate regulation; and (2) do not have effective competition, as determined by the FCC. The Department reviews the proposed basic service tier rates to determine whether such rates are just and reasonable and in compliance with applicable federal law. Pursuant to federal law, the Department does not regulate rates for expanded cable or premium services.

### **Consumer Protections and Education**

The Department investigates and resolves individual consumer complaints, by either an informal negotiation process between the consumer and service provider, or by formal Department adjudicatory proceedings. The Department also tracks patterns of complaints in order to identify and resolve more widespread problems.

The Department has regulations designed to afford consumer protections to residential landline telephone and cable subscribers, particularly with respect to billing and termination of service. Cable operators must make annual filings to ensure compliance with these consumer protection regulations, whereas telephone providers file rate schedules in accordance with these requirements. Through dedicated hotlines, published consumer information and advisories, fact sheets, outreach events, and a consumer-friendly website, the Department serves as a source of information to help consumers understand these industries, as well as to educate them about the service options available to them. In addition, the Department often serves as a resource to the industry, providing guidance and information on consumer-related issues.

## **FY 2016 Accomplishments**

During FY 2016, the Department concluded several dockets impacting Massachusetts businesses and consumers. Docket matters included:<sup>10</sup>

- Reviewing and issuing orders on petitions to adjust basic service tier programming, equipment, and installation rates in communities served by Charter Communications,<sup>11</sup> Comcast, Cox Communications, Time Warner Cable;
- Enforcing telecommunications carriers' annual revenue reporting requirements;
- Dismissing a petition for designation as an ETC to provide Lifeline service in Massachusetts; and
- Reviewing the Department's regulations per the Governor's Executive Order 562 to Reduce Unnecessary Regulatory Burden.

In addition to docket matters, the Department:

- Submitted 13 filings to the FCC;
- Reviewed and approved 4 interconnection agreements;
- Reviewed more than 205 new and revised rate schedules;
- Provided continued support to the development of the Commonwealth's Broadband Initiative. This support included assistance to the Massachusetts Broadband Institute ("MBI") and its work to develop "middle-mile" and "last-mile" infrastructure solutions in Western Massachusetts based on its successful federal Broadband Technology Opportunities Program grant and the Massachusetts Broadband Incentive Fund. The Department provided support and guidance to MBI on various state and federal regulatory matters, including the expansion of broadband service into unserved communities by cable companies. In addition, the Department Commissioner sits on the MBI's Board of Directors;
- Implemented a new complaint management database to better track, assess, and manage consumer complaint data and statistics. With this implementation, the Department has more detailed information about industry

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<sup>10</sup> Refer to Appendix A for additional docket information.

<sup>11</sup> The number of rate-regulated communities has decreased in recent years due to determinations of effective competition in those communities made by the FCC.

trends and is now able to track complaints according to the various communication and cable service types a consumer subscribes to;

- Resolved 2,363 individual consumer complaints;
- Drafted and issued several Consumer and Industry Notices on various matters. Topics included information on: (1) technological changes occurring in the communications network such as the retirement of copper facilities and transition to a fiber network; (2) staying connected to a telephone service during power outages, including the need for a battery backup for some types of telephone technologies; (3) guidance regarding changes to the Lifeline program and an application checklist; and (4) the federal Universal Service programs and Massachusetts ETCs; and
- Retained state jurisdiction over cable rates in 116 communities by demonstrating to the FCC that the cable providers in these communities are not subject to effective competition.

## **Administration Division**

### **Overview**

The Administration Division provides administrative support to the Department.

### **Division Responsibilities**

#### **Finance**

The Division handles budget preparation and controls, purchasing, accounts receivable and accounts payable, payroll, and other administrative financial services. The Department's budget for FY 2016 was \$3 million. Revenue collected during that same period was \$4.6 million of which \$1.6 million was returned to the General Fund from revenue sources that include telecommunications and cable filing fees.

#### **Human Resources**

In conjunction with the Office of Consumer Affairs and Business Regulation, the Division is responsible for payroll actions and human resource management.

#### **Legal Support**

The Division is responsible for publishing notices of all Department public hearings. In FY 2016, the Department conducted 3 evidentiary and/or public hearings. The Division also processes all docket filings and Orders issued by the Department including management of record retention. Staff issued 9 decisions in FY 2016. Additionally, staff responded to requests for information regarding docketed matters.

## **Competition Division**

### **Overview**

The Competition Division provides technical and analytical support to the Commissioner of the Department, as well as to the Department's Legal, Administration, and Consumer Divisions and other Administration officials, in the regulation of the telecommunications and cable industries in Massachusetts.<sup>12</sup> Through its various responsibilities, the Competition Division supports the Department's missions.

### **Division Responsibilities**

#### **Development of Policies that Promote Sustainable Competition and Conform the Level and Type of Regulation to Market Conditions**

In conjunction with the Legal Division, Competition Division staff conducts formal and informal policy investigations to ensure that consumers of telecommunications and cable services continue to reap the benefits of competition and that such competition accrues to all residents of Massachusetts. In addition, Competition Division staff safeguards consumers by implementing new regulatory policies to ensure that the rates, terms, and conditions of telecommunications and cable services are just and reasonable, where market forces alone cannot do so. Competition staff drafted discovery questions to and reviewed discovery responses from companies involved in Department investigations throughout FY 2016. The Competition Division assisted the Legal Division staff in preparing and finalizing Orders relating to ongoing investigations. In FY 2016, Competition Division staff conducted technical analyses in Department compliance proceedings, both formal and informal.

#### **Analysis and Implementation of Major Federal Regulatory Changes**

Decisions of the FCC, Congress, and state and federal courts affect the structure of the telecommunications and cable industries and the Department's authority to regulate those services. Competition Division and Legal Division staff monitor large volumes of relevant case law and actions from other agencies and jurisdictions, both federal and state, to keep abreast of major issues that may influence the provision of

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<sup>12</sup> In 1971, the Legislature established the Massachusetts Community Antenna Television Commission ("Cable Commission"). In 1997, the Cable Commission was merged into the Department of Telecommunications and Energy as the Cable Television Division. Pursuant to Chapter 19 of the Acts of 2007, the Department's predecessor agency, the Department of Telecommunications and Energy, ceased to exist. Jurisdiction over telecommunications and cable matters was placed in the newly-established Department. All telecommunications and cable authority and cases were initially transferred to the Department's Telecommunications and Cable Television Divisions, respectively. Shortly thereafter, the Department merged the separate Cable and Telecommunications Divisions to form the Competition Division, in order to increase efficiencies by taking advantage of synergies created by convergence in these industries.

telecommunications and cable services within Massachusetts. Competition Division staff also monitor broadband-related activities, since it is increasingly becoming the pipeline by which telecommunications and cable services are being provided to Massachusetts consumers and is a major focus of many FCC reform proceedings.

In FY 2016, the Competition Division devoted substantial time supporting the Department's information and advocacy efforts before the FCC regarding broadband deployment, cable regulation, cramming, E-rate, inmate calling services, intercarrier compensation, IP transition, Lifeline, public safety, Telecommunications Relay Services and USF. In FY 2016, the Competition Division, with assistance from Legal Division and Consumer Division staff as needed, submitted 13 sets of comments and filings in several proceedings of particular importance to Massachusetts. A list of these filings and their summaries are provided as Appendix D to this report.

### **Review of New Registrations and of Original and Amended Rate Schedule Filings**

Companies wishing to do business and provide telecommunications services in Massachusetts must file an SBO and have an approved retail rate schedule on file with the Department. The SBO includes a general description of the services to be offered by the carrier, contact information for customers who need to reach the carrier with questions or complaints, and a statement that the company has made all appropriate federal and state income tax filings and paid all income taxes. During FY 2016, the Competition Division handled filings from 8 new carriers.

The Competition Division reviews competitive carriers' rate schedules to make sure that they do not contain any terms or provisions that are in violation of Department policy (e.g., a carrier cannot offer service on the condition that a customer agrees not to contest any charges). Some rate schedules are relatively short, but others are lengthy and complex. Competitive carriers are free to determine prices and service offerings based on what the market will bear or market-based pricing. In FY 2016, the Competition Division reviewed and approved 205 rate schedules and 4 interconnection agreements between carriers.

### **Market Monitoring and Reporting Function**

The evolution of the telecommunications and cable industries in Massachusetts has resulted in many new telecommunications service providers, new technologies, such as fixed VoIP telephone service, and a plethora of new service offerings. In addition, the competitive landscape is constantly changing, with new types of competitors and individual companies taking on a greater or lesser role in the marketplace each year. Because of the changing nature of the telecommunications and cable industries, the Competition Division analyzes new technologies and market developments in order to determine their impact on consumers and the competitive marketplace.

## **Consumer Education and Public Information**

The Competition Division devotes substantial staff time explaining the Department's regulations and policies to potential and existing providers of telecommunications and cable services, local and state officials, state and federal legislators, other Massachusetts agencies, the FCC and other state public utility commissions, as well as various other constituencies. Staff also devotes significant time to consumer inquiries from the Consumer Division. From time to time, the Department requires telecommunications carriers to develop customer education materials explaining major changes in the provision of services. The Competition Division reviews these education materials for technical accuracy. As needed, staff develops educational materials in response to industry changes, Consumer Division requests, or Department Orders. In FY 2016, Competition Division staff assisted in the Department's ongoing investigation into consumer protection rules for Lifeline services.

## **Legal Division**

### **Overview**

The Legal Division staff serves as the chief legal and policy advisor to the Commissioner and provides legal support to all Divisions of the Department. Legal Division staff members serve as hearing officers presiding over most of the Department's adjudicatory hearings.



## **Division Responsibilities**

### **Formal Adjudication**

Pursuant to M.G.L. c. 25C, § 4, which permits the Commissioner to designate employees of the Department to preside over Department hearings, Legal Division staff attorneys serve as hearing officers at Department adjudicatory proceedings conducted under the Massachusetts Administrative Procedures Act (M.G.L. c. 30A) and the Department's procedural regulations (220 C.M.R. § 1.00 et seq.). During FY 2016, the Legal Division participated in the issuance of 4 Final Orders. A list of the Orders issued is attached as Appendix A. Adjudications are the formal determination of parties' rights through an administrative hearing process. All parties—the party(ies) filing the action and any respondents or intervenors—are entitled to due process safeguards, meaning that the parties are entitled to adequate notice and the opportunity to be heard. Parties to the action have the right to present evidence, cross-examine witnesses, receive a written decision from the Department, and appeal that decision. Adjudicatory proceedings vary in complexity, including the following types of proceedings:

- Service quality issues;
- Ratemaking, including cable rate and telecommunications rate schedule orders;
- Disputes between pole owners and pole attachers;
- Interconnection disputes between telecommunications carriers;
- Certification of telecommunications carriers to do business within the Commonwealth;
- Certification of telecommunications carriers as ETC entitled to receive USF from the federal government; and
- Formal consumer adjudications.

In conducting a formal adjudicatory proceeding, the Department generally holds two types of hearings: (1) a public hearing; and (2) an evidentiary hearing. Public hearings are publicized through legal notice in newspapers in the provider's service territory. In certain types of cases, public hearings are conducted in a provider's service territory. Public hearings are transcribed by a stenographer. If conducted in a provider's service territory, public hearings are typically conducted during the evening in an easily accessible public building such as the Town Hall, and are overseen by a hearing officer. Otherwise, public hearings are typically conducted at the Department's Boston office at 1000 Washington Street, Boston, MA 02118. The public hearings afford local consumers the opportunity to learn more about a rate request, offer their input about the pending case, and comment on the practices of the provider. Public hearings also allow staff of the Department to hear concerns of customers and local elected officials.

Residential and business customers, as well as municipalities, are valuable sources of information to the Department in developing a case record.

Evidentiary hearings are conducted in a courtroom setting in the Department's Boston office. These proceedings are also transcribed by a stenographer. The Commissioner or a hearing officer presides over evidentiary hearings, with the active participation of the Department's technical and legal staff. Staff members question witnesses to ensure that the record is accurate and complete, while the Commissioner or hearing officer controls the conduct of the proceeding.

While the adjudicatory process does not require adherence to all formal rules of evidence, the evidentiary hearing process follows rules that mirror many of the civil procedure rules used by Massachusetts courts, and parties are typically represented by counsel.

Evidentiary hearings afford all parties, including intervenors, the opportunity to question witnesses. In some cases, the Attorney General ("AG") of the Commonwealth is an intervenor. Other intervenors may include public interest organizations, and local consumer, business, or neighborhood groups. Sometimes intervenors put on a direct case with witnesses of their own. Based on the evidence in the record, the Department issues a Final Order at the conclusion of each adjudicatory proceeding. Pursuant to M.G.L. c. 25, § 5, and M.G. L. c. 166A, § 2, the Department's Final Orders are reviewed directly by the Massachusetts Supreme Judicial Court. In certain circumstances, Department Orders may also be appealed to the Federal District Court or the FCC.

## **Rulemaking**

The Department conducts rulemaking pursuant to M.G.L. c. 30A, §§ 4-10 and 220 C.M.R. § 2.00, to adopt, amend, or repeal regulations pertaining to the activities of all industries the Department is charged by statute with regulating. A rulemaking proceeding may involve simple procedural regulations or may address complex regulatory issues. The Department is required to provide public notice of a proposed rulemaking and to allow an opportunity for public comment. After consideration of the public comment, the Department may issue final regulations. Any final regulation must be published in the Code of Massachusetts Regulations.

In accordance with Executive Order 562 to Reduce Unnecessary Regulatory Burden, the Department has undertaken a review of its regulations. The Department's regulations currently reside in two Titles of the C.M.R., with cable regulations located in Title 207 and telecommunications regulations located in Title 220. However, Title 220 has been assigned to the Department's sister agency, the DPU. Further, certain chapters, including 220 C.M.R. §§ 1.00, 2.00, 5.00, 45.00, 26.00, 77.00, and 78.00, are shared regulations that currently apply to industries regulated by both agencies. As a result, the Department has proposed to shift Department regulations and those applicable to telecommunications into Title 207. In addition, with the exception of 220 C.M.R. § 45.00, which will continue to apply to both agencies, the Department has proposed to advise rescission of telecommunications-specific regulations within Title 220.

The Department has also proposed to merge procedural regulations applicable to cable and telecommunications into a single chapter, 207 C.M.R. § 1.00, and similarly merge rules involving the adoption, amendment, or repeal of regulations into 207 C.M.R. § 2.00. Other proposed changes include technical corrections, updating outdated references, rescinding unnecessary regulations, and choosing to not repromulgate certain shared regulations.

## **Compliance—General**

The Legal Division, in cooperation with other Divisions of the Department, ensures compliance with a wide variety of laws, regulations, and policies. More specifically, during FY 2016 the Department continued to ensure that telecommunications and cable providers were complying with state statutes, rules, Department Orders, and all other regulatory requirements. For example, the Department continued its DTC 16-AR annual returns investigation and compliance actions against carriers operating without Department approval and moved forward on carrier delinquencies relating to calendar year 2012 and 2013 annual returns. The Department's methods for ensuring compliance can include mass mailings notifying the industry of Department rules and regulations, issuing Notices of Probable Violation ("NOPV"), opening investigations, issuing Orders to cease and desist, assessing forfeitures for non-compliance, and referring violators to the AG's Office for enforcement.

## **Consumer Division**

### **Overview**

The Consumer Division's primary responsibilities include enforcing and monitoring compliance with Massachusetts laws and Department regulations and policies to protect consumers of cable and landline telecommunications services. Hundreds of companies fall within the scope of the Consumer Division's regulatory authority.

While the Consumer Division primarily handles issues involving cable and landline telecommunications services, increasingly, consumers are contacting the Department seeking assistance with issues relating to unregulated communications services. The Consumer Division routinely receives inquiries and complaints from customers about internet/broadband service, satellite television, VoIP and wireless service providers.<sup>13</sup> See Appendix B for the breakdown of Consumer Division statistics by service provider.

### **Division Responsibilities**

#### **Enforce Residential Consumer Protection Rules:**

- Inform consumers of their rights;
- Serve as a resource for both consumers and industry on issues related to telecommunications and cable matters;
- Ensure service provider's compliance with billing and termination rules; and
- Conduct informal case investigations to resolve disputes.

#### **Additional Protections:**

- Intervene in quality of service issues to maintain connectivity to networks, especially to 911 services; and
- Educate the public about industry-related issues, including technological changes and other issues impacting consumers in the communications marketplace.

#### **Respond to Consumer Inquiries**

The Consumer Division conducts informal complaint investigations, responds to inquiries, and participates in the critical role of informing and educating consumers

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<sup>13</sup> Due to its former role handling energy-related issues on behalf of the DPU, the Consumer Division handles a marginal number of calls from consumers seeking to contact the DPU.

about various technological changes affecting their telecommunications and cable services. The Consumer Division's most important duty is to respond to the roughly 50 telephone contacts it receives daily.<sup>14</sup> Consumers may contact the Division by telephone, mail, email, and fax or by visiting the office, although the vast majority of consumer contacts are made by telephone. Contacts to the Consumer Division are further categorized as either informational inquiries, requests for Department materials, referrals to other agencies, or case investigations that require direct involvement with a consumer's service provider.

The Consumer Division operates a Consumer Hotline ("Hotline") where members of the public receive personal and prompt attention by staff who respond to inquiries or initiate the complaint resolution process. Consumers who contact the Hotline are also presented with the option of utilizing an automated voice response assistance system for those consumers who initially wish to speak directly with their service provider, but may have contacted the Division in error. Callers are automatically transferred to their service provider by speaking the name of a provider without having to place an additional call. The Hotline also provides a menu option for Spanish-speaking callers who wish to speak to a representative in their native language. Division staff are also equipped to assist Portuguese-speaking consumers.

The Consumer Division receives a number of contacts that the Division classifies as "unregulated matters." These contacts typically consist of miscellaneous issues that are either unassociated with a known service provider or involve non-regulated issues or entities outside of the Department's jurisdiction. Examples of such unregulated matters include contacts relating to collection agency practices internet/broadband satellite, telemarketing/Do-Not-Call Registry, VoIP and wireless. These unregulated matters may be referred to an external agency such as the AG, the Federal Trade Commission, or the FCC for appropriate handling.

### **Investigate and Resolve Consumer Complaints**

The two main complaint types received in the Consumer Division concern billing disputes and quality of service problems. The Division also fields a number of complaints and inquiries related to the federal government's Lifeline program. This year, the Consumer Division's highest number of inquiries concerned: (1) questions concerning taxes and fees appearing on monthly billing statements; (2) the impact of the telephone service delivery being swapped from copper wires to fiber optics; and (3) unwanted telemarketing calls, telephone scams, and Caller ID spoofing.

In cases where the company is found to be at fault, as part of its informal investigation, the Consumer Division requires the company to provide an explanation addressing the problem, make the corrective action, make any warranted refunds or credits to consumer bills, or resolve any barriers to enrollment in the Lifeline program.

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<sup>14</sup> The Consumer Division's contact numbers for the year include calls received that were transferred directly to companies through the Department's automated telephone software. Through this software, callers are directly transferred to a telecommunications or cable provider of their choice simply by speaking the name of the company they wish to contact. During this period, 11,243 consumers were redirected to the appropriate company for assistance.

Every complaint opened by the Consumer Division must be resolved before it can be closed. If the residential telephone consumer or the service provider is not satisfied with the investigator's resolution of a complaint, a request for additional mediation through an informal hearing is scheduled within the Consumer Division. Parties dissatisfied with the informal written decision issued on the complaint may request a formal adjudicatory hearing conducted by a hearing officer in the Department's Legal Division.

The unauthorized switching of a consumer's telephone service provider is known as "slamming" and is a violation of M.G. L. c. 93 §§108 to 113. Companies that engage in slamming may be subject to a fine. The Consumer Division enforces both federal and state laws prohibiting slamming. If the Department determines that an unauthorized switch has occurred, consumers will receive a refund of any unauthorized charges that they paid. Under Massachusetts law, consumers must bring telephone service slamming complaints to the Division within 90 days.

### **Advise the Department**

The Consumer Division alerts the Department to important consumer issues including significant complaint trends, bundled billing issues, and technological changes impacting services that consumers subscribe to. A continuing complaint trend regarding deceptive marketing and advertising practices of promotional offers has caused the Department to examine more closely the full disclosure and notice requirements. The Department has worked with the AG on disclosures and other issues.

### **Review Bills and Notices**

The Consumer Division reviews certain telecommunication and cable company billing material and customer notices to ensure that they provide consumers with clear and accurate information.

### **Provide Consumer Education**

The Department's website is regularly updated to provide consumers with information about significant complaint trends (examples include transition of the telephone network from copper to fiber, tips for staying connected during emergencies, and the Lifeline program) in order to educate the public about consumer protections, and to increase awareness on many consumer issues. Also, the Consumer Division fields many calls from consumers requesting information or applications about the Lifeline program to obtain a discount on their landline or wireless telephone service in order to stay connected to the communications infrastructure. Staff assists with dispute resolution to facilitate problems encountered by eligible applicants.

The Consumer Division actively engages communities throughout the Commonwealth and regularly participates in outreach events to promote awareness of how the Department can assist consumers. The Division also offers several outreach programs designed to educate consumers about current industry-related issues, including technology transitions, the reforms to the Lifeline program, as well as other consumer

protection measures. The Consumer Division, along with the assistance of the Administration Division, regularly conducts mass mailings of its brochures, fact sheets, and consumer advisories. The Division also sends targeted email blasts, maintains an active Twitter account, and appears on local community access television programs to ensure the public is reached through multiple mediums.

## **Statistics**

The Consumer Division provides statistical information to the Department, industry-related companies, government representatives, and the media. The statistical complaint data compiled by the Consumer Division provides an important basis for identifying industry-related trends and determining whether fines should be levied against a company for failure to meet required service quality benchmarks. Statistical complaint data may also provide evidence of fraud or unfair trade practices, and if so, would be shared with the AG.

## **FY 2016 Telecommunications and Cable Accomplishments**

- Responded to 746 inquiries;
- Investigated 2,363 complaints, including unregulated complaints;
- Authorized \$193,218.65 in consumer refunds;
- Monitored complaint trends and advised the Department on important consumer issues;
- Approved various bill notices and billing inserts;
- Provided consumer education to the general public, and training to staff at various organizations assisting seniors, low-income clients, and other vulnerable consumers about the Lifeline program, including upcoming program reforms. Prepared informational packets containing consumer rights fact sheets and Department informational brochures for mass distribution;
- Distributed (1) the Copper to Fiber Migration Advisory, to inform consumers of changes to the telephone network, (2) the Cable Service Buying Guide, to assist consumers to understand making purchases for cable service, and (3) the Stay Connected During Emergencies Brochure, to assist consumers with wireline and wireless services during an emergency or disaster;
- Compiled statistics for reporting and informational purposes; and
- Conducted 35 consumer outreach initiatives throughout the Commonwealth that ensured that consumers received information about telephone and cable services and provided consumers with access to the Department in their communities. Conducted 2 statewide initiatives in addition to the following events broken down by county: Berkshire (1), Barnstable (1), Bristol (2), Essex

(5), Hampden (2), Hampshire (1), Middlesex (10), Norfolk (1), Plymouth (1), Suffolk (3), and Worcester (6). See Appendix C  
FY 2016 Consumer Outreach Events for additional breakdown;

- The Consumer Division assisted consumers with energy-related matters by referring them to the DPU;
- Additionally, the Consumer Division assisted consumers with issues that are outside of the Department's jurisdiction (e.g., wireless, satellite television, internet, VoIP, etc.) by contacting their company to inform and/or resolve the issue.



## Appendix A

### FY 2016 Department Orders Issued

Docket No.	Caption	Description	Date Order Issued	Date Closed
11-16	Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls	Interlocutory Order	6/14/2016	7/4/2016
16-AR	DTC 16-AR-5, 16-AR-8, and 16-AR-20, Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39, and G. L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2012 and/or 2013	Memorandum of Dismissal	3/9/2016	3/29/2016
16-AR	DTC 16-AR-13 Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39, and G. L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2012 and/or 2013	Memorandum of Dismissal	2/11/2016	3/2/2016
15-1	Petition of CoxCom, Inc. d/b/a Cox Communications to establish and adjust the basic service tier programming, equipment, and installation rates for the Town of Holland	Approved Refund Plan	12/31/2015	1/20/2016
11-7	Petition of Nexus Communications, Inc. for Designation as an Eligible Communications Carrier	Order of Dismissal	12/15/2015	1/4/2016
14-7	Petition of Time Warner Cable for Review of FCC Form 1240 and Form 1205 for the Great Barrington, North Adams and Pittsfield Systems	Final Order and Rate Chart	11/23/2015	12/13/2015
15-1	Petition of CoxCom, Inc. d/b/a Cox Communications to establish and adjust the basic service tier programming, equipment, and installation rates for the Town of Holland	Final Order and Rate Chart	11/19/2015	12/9/2015
14-6	Petition of Charter Communications to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Charter Communications that are currently subject to rate regulation	Final Order and Rate Chart	10/30/2015	11/19/2015
14-4	Petition of Comcast Cable Communications, LLC to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Comcast Cable Communications, LLC that are currently subject to rate regulation	Final Order and Rate Chart	9/17/2015	10/7/2015

## Appendix B

### FY 2016 Consumer Division Telecommunications & Cable Statistics

SERVICE PROVIDER	INVESTIGATIONS	INQUIRIES	AUTO ATTENDANT TRANSFERS	ADJUSTMENTS
ACN, LLC	1	0	0	\$0.00
Assurance Wireless by Virgin Mobile USA*	127	16	634	\$51.65
A&T, Inc.	16	3	99	\$695.21
AT&T Mobility	28	2	0	\$846.24
Birch Communications	1	0	0	\$4,786.23
Braintree Electric Department	0	1	0	\$0.00
Budget PrePay, Inc.*	11	3	128	\$0.00
Charter Communications, Inc.	73	22	228	\$1,547.01
Comcast Corporation	1025	219	5932	\$85,894.83
Consumer Cellular, Inc.	1	0	0	\$0.00
Cox Communications	0	2	7	\$0.00
Crocker Communications	1	0	0	\$0.00
Department of Public Utilities	0	58	0	\$0.00
DirecTV	1	13	0	\$0.00
Dish Network	0	2	0	\$0.00
Global Tel*Link Corporation	0	1	0	\$0.00
Granite Telecommunications, LLC	1	0	0	\$0.00
FairPoint Communications, Inc. (Taconic Telephone Corp)	0	0	7	\$0.00
Hughes Network Systems	0	1	0	\$0.00
IDT America Corporation	1	1	0	\$0.00
ILD Telecommunications	1	0	0	\$0.00
Legacy Long Distance International, Inc.	0	2	0	\$0.00
Level 3 Communications, LLC	2	0	0	\$0.00
Matrix Business Technologies	1	0	0	\$0.00
MetroPCS by T-Mobile US, Inc.	1	1	0	\$0.00
Metropolitan Telecommunications	1	0	0	\$0.00
New Horizon Communications	1	1	0	\$0.00
One Communications dba EarthLink	19	4	0	\$24,434.51
One Touch Communications	0	1	0	\$0.00
Ooma Telco, Inc.	1	0	0	\$0.00
Other Government Agency	0	10	0	\$0.00
OTT Communications (Granby Telephone Company)	2	0	10	\$0.00
Primus Telecommunications, Inc.	1	0	0	\$35.90
RCN Corporation	60	11	855	\$2,998.47
ReliableIPTV LLC	1	0	0	\$0.00
Russell Cable Television	0	0	1	\$0.00

SERVICE PROVIDER	INVESTIGATIONS	INQUIRIES	AUTO ATTENDANT TRANSFERS	ADJUSTMENTS
SafeLink Wireless by TracFone Wireless Inc.*	76	8	103	\$0.00
Shrewsbury Electric and Cable Operations	0	2	41	\$0.00
Sprint Wireless <sup>15</sup>	13	1	14	\$428.19
StandUp Wireless by Global Connections Inc. of America*	1	0	7	\$0.00
T-Mobile Us, Inc. <sup>16</sup>	14	0	64	\$2,297.69
Time Warner Cable	19	11	94	\$2,444.47
TracFone Wireless, Inc. <sup>17</sup>	2	0	0	\$0.00
Unknown Service Provider	0	120	0	\$0.00
USBI	1	0	0	\$511.25
Value Plus Mobile	1	0	0	\$8.27
Verizon New England, Inc.	804	221	3,015	\$54,949.71
Verizon Wireless	48	7	0	\$11,289.02
Virgin Mobile USA by Sprint	0	1	0	\$0.00
Vonage America, Inc.	1	1	0	\$0.00
Windstream Communications	1	0	0	\$0.00
X5 OpCo, LLC (CornerStone Telephone Company)	2	0	4	\$0.00
XO Communications, Inc.	2	0	0	\$0.00
<b>Totals</b>	<b>2,363</b>	<b>746</b>	<b>11,243</b>	<b>\$193,218.65</b>

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<sup>15</sup> Includes complaints filed against Boost Mobile by Sprint Wireless.

<sup>16</sup> Includes complaints filed against Walmart Family Mobile by T-Mobile US, Inc.

<sup>17</sup> Includes complaints filed against Straight Talk Wireless by TracFone Wireless, Inc.

## Appendix C

### FY 2016 Consumer Outreach Events

Date	Event	Counties
July 2015	Presentation	Middlesex
	Presentation	Suffolk
	Presentation	Middlesex
August 2015	Resource Fair	Essex
	Community Festival	Essex
	Presentation	Middlesex
	Newsletter Publication	Middlesex
	Veterans' Event	Suffolk
September 2015	Presentation	Essex
	Cable Access Television	Hampden
	Resource Fair	Norfolk
	Information Table	Bristol
	Information Table	Worcester
	Resource Fair	Plymouth
October 2015	Information Table	Worcester
	Presentation	Bristol
	Information Table	Hampden
	Cable Access Television	Berkshire
	Presentation	Middlesex
March 2016	National Consumer Protection Week Event	Middlesex
	Newsletter Publication	Statewide
	Presentation	Middlesex
April 2016	Resource Fair	Middlesex
	Resource Fair	Middlesex
	Presentation	Suffolk
May 2016	Presentation	Middlesex
	Resource Fair	Hampshire
	Presentation	Barnstable
	Presentation	Essex
	Veterans' Event	Worcester
June 2016	Presentation	Essex
	Presentation	Worcester
	Veterans' Event	Worcester
	Presentation	Worcester
	Cable Access Television	Statewide

## Appendix D

### FY 2016 Department FCC Filings

Note: All Department filings are available through the Department, as well as through the FCC's publicly-accessible Electronic Comment Filing System, which is available online at: <http://apps.fcc.gov/ecfs/>.

Date Filed	Filed As	FCC Docket	Filing Type	Filing Description
6/9/16	MDTC General Counsel	WC 10-90	Acknowledgement of Confidentiality	Signed Acknowledgement of Confidentiality to access cost model materials in the FCC's Connect America Fund proceeding.
5/23/16	MDTC	MB 13-172 CSR-8814-E	Petition for Reconsideration	The MDTC requested reconsideration of the FCC's determination of effective competition in the Town of Templeton for purposes of cable rate regulation.
5/17/16	MDTC	WC 10-90	Ex Parte Letter	The MDTC filed comments urging the FCC to give special consideration to eligible BTOP recipients and state-funded broadband projects in the upcoming CAF II Auction.
3/23/16	NARUC	WC 11-42 WC 09-197	Ex Parte Letter	MDTC Commissioner signed on to letter with 95 other state commissioners representing 37 jurisdictions nationwide to address ETC designation concerns and state authority in the Lifeline program.
3/16/16	MDTC	WC 15-1	Ex Parte Letter	The MDTC filed comments urging the FCC to act promptly on a petition filed by Windstream and to clarify an ILEC's obligation to provide DS1 and DS3 capacity loops on an unbundled basis.
3/7/16	MDTC	WC 13-3	Reply Comments	The MDTC filed reply comments concerning USTelecom's ILEC non-dominant carrier finding request.
2/4/16	MDTC	Section 76.910 INBOX	Motion to File Surreply and Surreply	The MDTC filed a motion to file a surreply and a surreply to Time Warner's reconsideration request involving cable rate regulation in the Town of Adams.
1/19/16	MDTC	Section 76.910 INBOX	Opposition to Petition for Reconsideration	The MDTC filed an opposition to a Time Warner reconsideration request involving cable rate regulation in the Town of Adams.
12/8/15	MDTC	Section 76.910 INBOX	Form 328	The MDTC filed Form 328's involving FCC effective competition determinations and cable rate regulation involving cities and towns throughout the Commonwealth.
9/30/15	MDTC	CC 96-45 WC 14-58	Compliance	The MDTC filed its annual USF Connect America Fund high-cost ETC certification with supporting documentation.
9/2/15	MDTC	WC 11-42 WC 09-197 WC 10-90	Comments	The MDTC filed comments addressing ETC designation and relinquishment requirements for purposes of Lifeline.
7/30/15	MDTC	PS 14-174 GN 13-5 RM-11358 WC 05-25 RM-10593	Ex Parte Notice	The MDTC filed a notice of ex parte involving discussions with FCC staff on issues related to technology transitions, special access, and competition.
7/15/15	MDTC	PS 15-80 ET 04-35	Comments	The MDTC filed comments addressing the FCC's outage reporting requirements.